1:Wilson E-5 (1934-1938)1951 FN17 Ngonde FN17
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This practice of having official witnesses to every contract, and summoning them to give evidence should a dispute later arise, is one of the most important means of maintaining order in Nyakyusa society, and village neighbours are the usual witnesses.

c. Communal responsibility of the age-village

Formerly, in Nyakyusa law two forms of group responsibility were emphasized: the mutual responsibility of kinsmen, and the mutual responsibility of fellow villagers. A case of murder or manslaughter was primarily the concern of the agnatic lineage if the victim was a male or an unmarried girl, and of the lineages of both husband and father if the victim was a married woman. The kinsmen either killed the murderer, or brought him before the chief, who imposed a fine which went to the injured relatives. The Nyakyusa make a distinction between 'spearing by day' (direct physical injury) and 'spearing by night' (witchcraft); and only in the latter type of case did the fine go to the chief. Witchcraft was thus treated as an offence against the state—the chiefdom—while murder or manslaughter was an offence against the kinsmen of the dead. The concern of the state in witchcraft, and the joint responsibility of kinsmen on the one hand, and of fellow villagers on the other, was evident when, as sometimes happened, both groups were required by the chief to clear themselves of suspicion of witchcraft by each providing a representative to take the poison ordeal. Should the representative of either group fail to vomit then the responsible individual within that group was sought out by means of divination and the ordeal (*vide supra*, p. 116).

In a case of adultery the injured husband, together with his kinsmen, pursued and attempted to kill, or torture and kill, the adulterer: self-help was not only permitted but expected in this situation,[1] and a man's near kinsmen were obliged to assist him. Neighbours were not obliged to assist in executing vengeance, but they might be victims of it, for if the injured husband did not find the adulterer he might kill any village-mate of his enemy. Such an attack commonly led to war between the two villages;

[1] D. R. MacKenzie, *The Spirit-Ridden Konde* (1925), p. 61, says: 'The injured husband has the right to inflict death on the paramour. This is no mere tale of the past but a grim fact to-day . . . cases of this nature are very numerous.'

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and some informants suggested that it only occurred between the villages of different chiefs, though others insisted that it did occur between villages of the same chiefdom. Indeed any seduction of a woman of another village was liable to lead to war. A man of Bulindanajo seduced the wife of the headman of Bujege, Mwansambe. The men of Bulindanajo returned the woman to her husband, saying to their fellow: 'The men of Bujege are fearsome (*basisya*), it's a village of fathers, she's your mother' (cf. Document p. 181). But Mwansambe was angry and made war. The men of Bulindanajo protested, saying: 'We brought the woman back!' but he took no notice and attacked them. He was defeated, and fled.

A thief or an obstinate debtor was also a danger to his neighbours. For a victim or creditor living in another chiefdom, and so unable to obtain satisfaction in a chief's court—since a chief paid little attention to a complainant who was not his own man—might seize the wife of any village-mate of the man who had his property. Hence, the old men say, thieves and adulterers were liable to be banished from a village[1] just like witches and sorcerers, for they too brought misfortune on their fellows.

War between villages was apparently the usual upshot of an attack on the village neighbour of an enemy, but occasionally a settlement was arranged between the two villages concerned, and the adulterer or thief was held responsible for compensating his injured neighbour, or the latter's kinsmen. Kalunda and Mwalubunju explained: 'In the old days if a man ran off with my wife I should go and kill a village-mate of his. That meant, "Go, you villagers and look for my wife." Yes, this happened even in a village of my own chief. Then the villagers would go and look for my wife and when they found her with their neighbour they would bring her back to me with a spear or hoe as compensation. The man they would accuse, saying: "It was you who killed your fellow", so that he would have to make peace with the family of the dead man, not I. He would give them a daughter of his own to wife, or else pay ten cows, and they would be relatives then. Yes, ten cows they paid for a man's death, though only two for a woman in marriage.' Here the differing responsibilities of kinsmen and fellow villagers are evident.

The village was a fighting unit taking up quarrels on its own

[1] A cattle thief caught in the act was speared. . . . MacKenzie, op. cit., p. 86.

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In reply to a question of the court: 'He did not complain of impotence.' 754

In reply to a question by the accused: 'We did not discuss bewitching anybody.' 695

Order

'There is in my opinion no doubt that the accused is guilty of practising witchcraft for reward, and is causing fear and annoyance. Section 5 of the Witchcraft Ordinance virtually prohibits any effective and rapid steps being taken to combat witchcraft. Section 5 (i) necessitates the delay of trial by High Court, and the offence disclosed is not covered by it, whereas Section 5 (2) necessitates obtaining from His Excellency the Governor both sanction to prosecute and confirmation of any sentence imposed. Under the circumstances, and in view of the delay that has already taken place, permission is granted by the police to withdraw their request for sanction to prosecute under Section J (2).

'By virtue of the powers conferred on me by Section 8 cap. 21, Musa, son of Hassani, is ordered to reside at Mwaya and to report once a month at the District Office, pending such decision as the Provincial Commissioner shall make, following a request that he should exercise the powers conferred on him by Section 8 (3) to order Musa, son of Hassani, to reside in his own domicile, Usangu.'

The Provincial Commissioner agreed to the request and Musa is now in Sangu country. 696

3: Mackenzie M-5 (ca. 1925) 1925
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232 neck to tail, saying, "You will now give a cow-calf." What remains of the medicine is put into the stall, and the next calf will be a female. A cow that kills her calf in dropping it is given a medicine which will prevent the recurrence of the fatality. Medicine is also given if the milk is not satisfactory in quantity; and by rubbing in a medicine from tail to neck specialists claim to be able to tell whether a calf in the womb is male or female.

232 754 A disease which does not yield to treatment is the work either of the spirits or of a sorcerer. Divination is resorted to, and the particular spirit operating having been discovered, the appropriate offerings are made, and the disease will now yield to treatment. If it is due to witchcraft, the chief is informed, and he publicly announces that if the animal is not well by next day, he will have the poison test applied to discover the culprit. This, however, if done at all to-day, is done in secrecy, for the chief who permits the poison cup to be administered is liable to severe penalties. But so universal is the belief in witchcraft that the suppression of the poison cup is adduced as the cause of a great increase in the number of sorcerers, and consequently of the general insecurity.

• 696 Cattle are sometimes deliberately poisoned. A man has a case at court, and it goes against him, although he is convinced that he is in the right. He is ordered [278] to pay a cow to his antagonist; which he does, but he first poisons it with a slow-working drug, and the animal will die in a few days. The successful litigant, although he knows perfectly the cause of the death,

3: Mackenzie M-5 (ca. 1925) 1925
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696 rarely appeals, convinced, though without reason, that the magistrate will pooh-pooh his story.

231 754 In 1920 a lake-shore chief was fined a large number of cattle ; and the animals, removed to the hills where the veterinary officer lived, did not thrive. The reason is no doubt to be found in the different climate ; but the natives give two quite different ones : many of them were bewitched ; and others were given a slow-working poison by owners who resented the fine. But the fact that many natives willingly bought them when offered for sale seems to indicate not all held the two theories referred to.

231 157 When an epidemic carries off large numbers of cattle, the Konde assume a fatalistic attitude. There is nothing to be done : why worry ? In 1894 immense numbers of cattle died of rinderpest. After learning by divination that neither spirits nor sorcerers had anything to do with it, the people put it down to *Mwanjebe*, a troublesome godlet of the neighbouring Kamanga tribe, against whom there was no appeal, and no protection. They assume the same fatalistic attitude to the interference of the white man, and a supreme distrust of all kinds of injections has arisen in their minds, since the widespread injections of 1918, when many of their cattle died. The chiefs are credited with saying on that occasion, " If the white man wishes to inject, let him inject ! Why make him angry ? Let the cattle die rather." If this is true, it is a testimony to the immense personal prestige of the white man, but is hardly flattering to his veterinary skill. A warning was issued that the flesh of cattle

9: Wilson E-5 (1934-1955) 1959
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the prospect of their enemies using them. The notion that medicines are a weapon which may be used rightly or wrongly is very clearly brought out in the attitude towards 'making' animals. If a private individual 'makes' lion, or leopard, or crocodile which kill men that is sorcery—there is no question about it—and we heard of at least one man who had been driven from his home because he was reputed to have made leopards which killed children and cattle,[1] but when Mwakyonde 'made' lions which drove off pig and did not attack men, that was a public service (*vide* p. 69). And when one chief uses lions in his conflict with another the action is felt to be comparable with war, rather than murder. In February 1937, four lions were hunting in a piece of bush country near the salt lick, which two chiefs claimed. Mwansumbwe, a chief from the hills, had sent some of his men to clear fields in the bush, but Mwakagile (50, or his heir), the neighbouring chief, objected saying, 'This is my land.' There was a long case and finally the District Officer gave judgement in favour of Mwakagile and refused Mwansumbwe any compensation for his work in clearing the bush. 'You got a crop for your labour,' he said. Mwansumbwe was incensed by the judgement and grew even more angry when his men elected to remain on the land they had cleared and became men of Mwakagile. So, everyone said, Mwansumbwe had sought medicines and created these lions. They killed seven cattle in a few days, attacking even by daylight. 'Yes,' we were told, 'there are always lion in the bush, but they do not ordinarily kill cattle as they have done now.'

Another chief who tried the same sort of thing was not so successful. 'Some time ago the chief Mwakila made elephants, he turned his wives into elephants and they ate the bananas of Malapula, but Malapula said, "Let's try", and he created much rain which poured down on to the elephants and those wives died. Then Mwakila was defeated. How about you Europeans? Have you this custom? Do you turn a wife into an animal?'

'No!'

'We have it, if I choose I give my wife *isigita* and she becomes a lion which roars, it roars and eats people.'[2]

[1] cf. Monica Wilson, *Good Company*, p. 124.

[2] This, and the tale of a young man fleeing from justice who obtained a medicine to turn himself into a lion, were the only accounts of lycanthropy we heard—usually the medicines themselves (such as those of a chief) turn into animals, or the young of ordinary lion, leopard, or crocodile 'smell the medicines' and become attached to the 'owner' who feeds and commands them.

423 428 [693] believed that parents and children should live apart.[1] In the same way, and for similar reasons, an elder brother tries to make provision for his junior when the latter marries if their father is already dead. The practice of the father is not a legally required one, although it is nowadays increasingly common and sons have begun to expect it: the practice of an elder brother is now legally required in the matter of land and probably always has been in the matter of cattle.

[646] The difficulties are obvious when a man dies and leaves several sons but only a small-sized holding. To date no clear ruling has emerged and unfortunately the African District Council did not deal specifically with such details when introducing the new law. How much land an eldest brother can reasonably retain for himself is perhaps not determinable in practice except in specific relation to the nature, locality and fertility of the holding in question, the plots already held by the man himself, the needs and number of the younger brothers and any holdings they may have, and [508] the location of the villages in which they severally live. There is also plenty of scope for disagreement between half-brothers over portions of the paternal holding which had been retained by the father himself for his own use; over portions allocated to a wife who has borne no sons or whose sons have died, and over permanent trees. The situation is still fluid and there has not yet been time enough for a common and generally acceptable solution to be established. Consequently each group of sons tries to solve its own particular problems in this matter as best it can, torn between old values and new attitudes and needs.

593 428 Relations between both full-brothers and half-brothers tend often to be severely tried at times of inheritance. It is not primarily, I think, a case of brothers' greed for valued land tending to overcome bonds of fraternity and co-operation; but it is rather that a father's arable holding is often not able to provide adequate amounts of arable land for each of his sons, and yet they find the very greatest difficulty in obtaining land elsewhere. Already the traditional kin-group comprising the sons and grandsons of a group of [182] full-brothers had begun to break down even before land shortage became serious. Now the group of full-brothers itself tends to be dispersed as men obtain land where they can and it is endangered by dissensions over land rights and land division. Increasingly, it seems, a Nyakyusa man is becoming detached from his brothers and he tends to establish an independent family unit comprising his immediate family alone – that is, himself with his wives and children. We cannot attribute the whole cause of this modern trend to land shortage and economic difficulties, of course, for involved also are new ideas of individualism and of personal effort and reward, and the decreasing need for the consistent support of brothers in social, economic and ritual activities.

578 423 428 Younger brothers may, and sometimes do in fact, agree that the paternal holding is already too small for further sub-division, or that the small parts which can be made available to them are scarcely worth having – especially if they live some distance away. On the other hand, the eldest brother may already have obtained a holding in his own village and is therefore willing to make only a small claim or none at all in the interests of his juniors, and he may then divide the inheritance amongst them alone. Usually, so acute is the dearth of land, the holding is divided between two [311] or more brothers. It is split into small plots so that each brother has a share of paddy, food-crop and banana land, and these are commonly a half acre or even less in size nowadays. As already mentioned, by a kind of modern [696] equity the local African courts generally favour the claims of the younger

1. See Wilson, M., 1951, p. 139 and *passim*. "The overt purpose (of age-villages) is the separation of sons and mothers, of fathers-in-law and daughters-in-law." (*Ibid* p. 163).

brothers, and this is compelling the increasing and continued fragmentation of holdings at time of inheritance. Even so, if there are several brothers (i.e., sons of the deceased) the youngest among them may still be unable to obtain a plot, or at least not one of an economically viable size, and they are then compelled to try to gain admittance to some other village as newcomers, there to be allocated land.

The shortage of land is, therefore, not only making inheritance very considerably more important, but it is assisting in the establishment of new kinship attitudes and a redefining of fraternal relations. The position is most confused at the moment as the old system continues to exist alongside the new, sometimes more or less successfully, but often in intractable opposition. At the present time the observer can only mention general tendencies, for it is impossible as yet to foresee what the eventual result will be, and there are, in any case, many other factors involved besides those of the inheritance of scarce land.

In so far as we are primarily concerned with land problems in this essay, the basic factors are that land is newly scarce, that there is virtually no alternative activity in the country to the arable use of the land, and that therefore each son must try to obtain a share in the often inadequate holding of his father. I suggest that no form of inheritance can deal with such a situation satisfactorily – at least it is highly doubtful if any has yet emerged in an area of land shortage in Eastern Africa – and thus there are bound to be severe difficulties and a deterioration of inter-personal relations between near kinsmen who are most in competition. The new inheritance law of the Nyakyusa has narrowed the range of potential conflict from the patrilineal descendants of a grandfather to the sons of a single father; but if it has obviated possible hostility between the generations and between paternal cousins, it has also removed much of the common interest and mutual inter-dependence between them.

The Right to Land, and the Authority of the Village Headman

Although the traditional principle still exists that every villager has a right to arable land within the village boundaries, yet it is no longer possible to carry it out in practice. Every village headman, in my experience, attempts to ensure that each of his men has land, but he cannot always succeed, and most especially he cannot provide every one with as much land as he would like, because of sheer spatial limitation.

Nowhere any longer does the old principle now hold that an established villager may, without permission or notification, take vacant land into cultivation as part of his holding. When land becomes vacant it must now revert immediately to the village as a group, that is to the common pool from which the headman as village authority makes allocations. There are so many and such varied demands for land nowadays that no man acting on his own can presume to take up vacant land, and only the headman may decide allocation. No person can now obtain land, whether he be an established villager or not, unless he is allocated it by the headman – or, in the many large villages typical of the Lake Plains, by the headman's assistant, *ugwakyimo*, who is delegated authority in a section of the village.

Land becomes vacant when a man shifts to another village, when a man dies and leaves no active heir who desires to take up the deceased's holding, or (but seldom today) when a man gives up part of his holding due to his inability to use the whole of it. In all these cases the land is immediately re-allocated by the headman, probably not as a single unit any longer, as best he can among a crowd of land-hungry villagers – established men seeking extra land to meet the needs of growing families or for increasing cash-crop